LAW SOCIETY OF IRELAND

Submission on the General Scheme of the Children (Amendment) Bill 2024

Joint Committee on Justice, Home Affairs and Migration

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1. About the Law Society

1.1 The Law Society of Ireland (**the Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland. The Law Society delivers high-quality legal education and training and places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

1.2 The Law Society appreciates the opportunity to provide this submission regarding the General Scheme of the Children (Amendment) Bill 2024 (**the General Scheme**) as part of the pre-legislative scrutiny process.

1.3 We have carefully reviewed the provisions of the General Scheme. Overall, in our view the General Scheme represents a further positive step towards bringing the Irish juvenile justice system into line with international standards such as those advocated by the United Nations Committee on the Rights of the Child.

1.4 We note the General Scheme seeks to implement recommendations that were made in the Youth Justice Strategy 2021 - 2027. We believe that while the General Scheme provides a welcome advancement of the juvenile justice system, the present opportunity should be seized upon so that the General Scheme also incorporates provisions to solve issues that have arisen concerning the Youth Diversion Programme (**the Diversion Programme**) and reinforce the protection of children in custody.

1.5 The matters that we address are the subject of recommendations made within the Youth Justice Strategy 2021 - 2027. What we are proposing are straightforward and constructive measures that would clarify some practical difficulties encountered by practitioners and would enhance the fairness of the system for juveniles.

2. Comments on aspects of the General Scheme

2.1 The Law Society proposes that the General Scheme should include a number of additional provisions, to be inserted in Part 2, immediately after Head 27.

Information on legal advice regarding the Youth Diversion Programme

2.2 Practitioners repeatedly have to ask the sitting judge to remit cases to the juvenile liaison officer as the child or their parents were not aware that they were entitled to seek legal advice regarding their inclusion in the Diversion Programme. After consultation the child may realise that acceptance in the programme is the best course of action in the circumstances.

2.3 To ensure that any decision made by the child is fully informed the Director of the Diversion Programme should be satisfied that the child and their parents or guardian have been made aware that they are entitled to legal advice before accepting or not accepting responsibility.

2.4 The Law Society proposes that the General Scheme should introduce a requirement for the introduction of a statutory information leaflet or formal notice to be provided to the child and their parents or guardian upon referral. The leaflet or notice would inform the child and their family, in accessible language, of their rights, the main elements of the process as well as possible outcomes and the potential consequences of accepting or not accepting responsibility. The information should also be provided verbally to the child (and their parents or guardians) in a way appropriate for their age and level of understanding.

Admissibility of discussion in the context of the Youth Diversion Programme

2.5 The child's admission to the Diversion Programme is only possible if the child acknowledges their responsibility in the commission of the offence. Section 48(1) of the Children Act 2001 (**the Principal Act**) provides:

> "*Subject to subsection (2), no evidence shall be admissible in any court in respect of— (a) any acceptance by a child of responsibility for criminal or anti-social behaviour in respect of which the child has been admitted to the Programme, (b) that behaviour, or (c) the child's involvement in the Programme*"

2.6 Subsection (2) authorises the provision of these information to the sentencing judge after the child's admission to the Diversion Programme. In addition, section 50 of the Principal Act introduces a blanket prohibition on the admission of any information, statement or admission disclosed or made in the course of a conference.

2.7 Considering the content and philosophy of the General Scheme, it should be made clear in the General Scheme that an admission, statement of information provided by the child in the course of the discussion for the consideration of their inclusion in the Diversion Programme would be explicitly inadmissible in any subsequent proceedings.

Written decision of refusal of admission in the Youth Diversion Programme

2.8 The Law Society recommends that the General Scheme should include a head amending section 24 of the Principal Act to explicitly require a written decision stating the grounds for refusal of admission to the Diversion Programme. Currently, decisions regarding the refusal of admission to the Diversion Programme are made without the child and parents or guardians understanding the reason for these decisions.

2.9 The provision of a written decision when a child is not admitted in the Diversion Programme would provide transparency to the decision. It would allow the parents or guardian and the child to understand the rationale and potentially challenge the decision.

2.10 This measure is recommended in the *Youth Justice Strategy 2021 - 2027* (at p. 35) which calls for the introduction of "*clear procedures to appeal of decision on admission to the Diversion Programme, communicate clear reasons for decisions*".

Avoiding unnecessary delays in admitting children to the Youth Diversion Programme

2.11 Delays in admitting a child to the Diversion Programme can arise for various reasons. For example, it is a relatively common occurrence for Gardaí to be awaiting evidence, such as certificate of analysis from Forensic Science Ireland, which can take up to a year. These delays create unwelcome uncertainty for the child and defer any potential proceedings. Delays

can result in the child "aging out" of eligibility for the Diversion Programme, or if the case goes to court the child might become too old. While the issue of aging out of the system in case the child is ultimately charged with an offence won't be a problem once the legislation is amended according to the General Scheme, it will still be an issue for the participation to the Diversion Programme.

2.12 An obligation to make a referral obligation to refer a child to the Diversion Programme should be provided for in the General Scheme. The General Scheme should provide a structured timeline that reflects the principle of prompt intervention in youth justice. Provision could be made for the timeline to only be extended where:

> (a) the evidence critical to assessment is demonstrably unavailable due to factors beyond Garda control, and
> (b) a supervising officer not below rank of superintendent records the reasons for the delay in writing.

2.13 Any extension should be notified in writing to the child, their parent or guardian and legal representative (if applicable) with an explanation of the cause, together with an indication of the expected timeframe for resolution.

2.14 The idea of avoiding unnecessary delays in the consideration for admission to the Diversion Programme is consistent with the recommendations of the *Youth Justice Strategy 2021 – 2027* (see strategic objective 3.4 at p. 31). The Strategy acknowledges a "need to ensure that procedures required by legislation support the most effective and efficient consideration of each case, including with regard to minimising delays*"* apropos of the Diversion Programme system.

2.15 In the spirit of avoiding unnecessary delays the Director of the Diversion Programme should ensure that Gardaí are issued with guidance on expediting Diversion Programme decisions and that they are apprised of the appropriate procedures to follow when managing cases involving delayed forensic or technical evidence

Treatment of children in Garda custody

2.16 Children are a vulnerable category of individuals, in particular when detained at garda stations. In practice, there is a need to reduce the risk of involuntary or uninformed waiver of the right to receive legal advice.

2.17 Section 57 of the Principal Act provides for the member in charge to inform the child (or ensure that the child is being informed) of their rights including the right to consult a solicitor. This information must be provided in a way that is appropriate for the age and understanding of the child.

2.18 In order to ensure that information is appropriately conveyed to the child and their right to legal assistance is waived in an informed manner, the Law Society proposes that the General Scheme should include a provision that requires that the information to be provided a second time and that it be recorded on camera in order to ensure there is verifiable evidence of the child's rights being respected. This recording would provide objective evidence of informed consent or waiver in case of challenge at a later stage.

2.19 The Law Society proposes that the General Scheme should include, in Part 2, a new head which would provide for the substitution of section 57 of the Principal Act with the following:

"Notification to child
57 - (1) Where a child is arrested and brought to a Garda Síochána station on suspicion of having committed an offence, the member in charge of the station shall without delay inform the child or cause the child to be informed, in a manner and in language that is appropriate to the age and level of understanding of the child—

(a) of the offence in respect of which he or she has been arrested,

(b) that he or she is entitled to consult a solicitor and how this entitlement can be availed of, and

(c) that the child's parent or guardian is being—

(i) informed that the child is in custody in the station,

(ii) given the information specified in paragraphs (a) and (b), and

(iii) requested to attend at the station without delay.

(2) (a) Where a child is to be interviewed in a Garda station in connection with an offence, the interviewing Garda shall, prior to the commencement of any questioning, inform the child of their right to consult with a solicitor and to have a solicitor present during interview.
(b) This notification shall be made in language appropriate to the age and understanding of the child.
(c) The notification shall be given on video and audio recording, and the child shall be asked to confirm their understanding on record.
(d) A parent, guardian or other appropriate adult present shall also be informed of the child's right to legal representation.
(e) An interview conducted in the absence of this recorded notification shall be inadmissible in any subsequent proceedings, unless the court is satisfied that there was a compelling and lawful justification for the omission.".

2.20 The General Scheme should also include a provision that to amend section 55 of the Principal Act in this regard so as to place a duty on both custody guard and interviewing Gardaí to ensure this right is clearly and repeatedly communicated.

3. Conclusion

3.1 The General Scheme of the Children (Amendment) Bill 2024, if enacted, will provide for better alignment of the juvenile justice system with international standards. The Law Society is of the opinion the General Scheme presents a valuable opportunity to also amend a small number of provisions of the Principal Act concerning the Diversion Programme in response to needs that have been observed in practice.

3.2 The Law Society appreciates the opportunity to provide submissions to the Joint Oireachtas Committee on Justice, Home Affairs and Migration. The Law Society, in particular through its Criminal Law Committee and the Policy Department, remains available to assist the Joint Committee.

3.3 For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie